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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/676,020	10/02/2003	Tetsuya Isobe	KAS-192	6446
7590 07/10/2007 MATTINGLY, STANGER & MALUR, P.C. Suite 370 1800 Diagonal Road Alexandria, VA 22314			EXAMINER TURK, NEIL N	
			ART UNIT 1743	PAPER NUMBER
			MAIL DATE 07/10/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/676,020	Applicant(s) ISOBE ET AL.	
	Examiner Neil Turk	Art Unit 1743	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE ____ MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on April 24th, 2007.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 and 8 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-6 and 8 is/are rejected.
- 7) ☒ Claim(s) 2 and 6 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 October 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Remarks

This Office Action fully acknowledges Applicant's remarks filed on April 24th, 2007. Claims 1-6 and 8 are pending. Claim 7 has been cancelled.

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the moving mechanism must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner,

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the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Objections

Claims 2 and 6 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim.

Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claim 2 appears to recite some of the same functions as those previously recited in the amended portion of claim 1. Claim 2 appears to have the same fitting operations as already recited in claim 1. Does Applicant intend further limit and define the removing of the seal piercing tool from the nozzle into the stationary container as the further limiting element to claim 1? Claim 6 also recites the function of fitting the seal piercing tool over the nozzle, as previously recited in claim 1. Claim 6 should only contain further limitations to claims 1 and 5.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-6, and 8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is unclear how the various mechanisms

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carry out their intended functions without any recitation to the structural elements, such as control elements and other structural elements, that could possibly control operations and have them occurring at certain times. The functional language drawn to the various mechanisms, movements, and operations in the claims do not set forth the structural limitations needed for such functions to occur. The claims recite process limitations within apparatus claims without furthering the structure of the claimed apparatus. As such, the functional language in the claims, absent the further structural elements for providing the functions, is not given patentable weight in apparatus claims

Further, with regard to claim 1, it is unclear what the moving mechanism is. Is it a motor connected a line along which the sampling mechanism is moved? Is it something else? Examiner notes paragraph [0010] of the pre-grant publication (2004/0067165) recites the reagent-sampling-arm moving mechanism, but does not see anywhere else in the specification a description or showing of what the moving mechanism is. It is also unclear what the difference is between the reagent sampling arm and the reagent sampling means. Does Applicant intend to further limit the reagent sampling arm in the newly amended portion of the claim? Further, the amended portion of claim 1 recites functional language to fitting the piercing tool, withdrawing the piercing tool, piercing the seal, and ultimately returning the piercing tool to the stationary container. These limitations are process limitations which are not given weight in an apparatus claim. Applicant needs to claim the further structural elements to the apparatus that allow for such functions to occur.

With regard to claim 2, the limitations in the claim are functional and, as such, are not attributed patentable weight in an apparatus claim without reciting the further structural elements necessary for carrying out the recited functions.

The same sort of functional and process limitations are seen in claim 4 with regard to the moving mechanism and the various movement and repeating operations. Claims 5 and 6 likewise presents functional language to the moving mechanism and does not introduce any further structural limitations to the apparatus. In claim 8, the recitation to the joining of the guides during a seal piercing operation is a functional limitation, and Applicant should instead claim the relative structural relationship between the seal piercing tool with a guide and the reagent bottle with a guide so as to provide for such a function.

Response to Arguments

Applicant's arguments filed April 24th, 2007 have been fully considered but they are not persuasive. With regards to claims 1-8 under 35 USC 112, 2nd paragraph, Applicant asserts that Examiner intended to apply an enablement and/or written description requirement. Examiner asserts that the claims were rejected under 112, 2nd paragraph as previously recited because the recited functional language lacked the necessary structural elements for carrying out such functions. As such the various functional language, absent of further structural limitations for carrying out the functions, was not given weight. Further, Applicant recites that Examiner did not treat the dependent claims. Examiner asserts that the dependent claims were treated, but the functional

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language in the dependent claims that lacked further recited structural elements was not given weight.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neil Turk whose telephone number is 571-272-8914. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on 571-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

NT

A handwritten signature in black ink, appearing to read "T. Qian". The signature is written in a cursive, flowing style with a long, sweeping line extending from the end.